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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,583	06/12/2001	Robert Wipfel	26530.60	6234
47699	7590	02/25/2005	EXAMINER	
HAYNES AND BOONE, LLP 901 MAIN STREET SUITE 3100 DALLAS, TX 75202-3789			GEREZGIHER, YEMANE M	
			ART UNIT	PAPER NUMBER
			2144	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/879,583	Applicant(s) WIPFEL ET AL.	
	Examiner Yemane M Gerezgiher	Art Unit 2144	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 January 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) a set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Although a node state field broadly indicating a current state of the node was previously disclosed in the claim, the amendment directed to a functional limitation of the node state field identifying "the node as being dead, alive, or preparing to shut down" necessitates further search and consideration in order to determine patentability of the claimed invention.
 (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☒ Applicant's reply has overcome the following rejection(s): of 35 U.S.C. 112 /1st Paragraph (Claims 1-9).
 6. ☒ Newly proposed or amended claim(s) 1-9 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-24

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s) _____
 13. ☒ Other: See Continuation Sheet.


 WILLIAM A. CUCHLINSKI, JR.
 SUPERVISORY PATENT EXAMINER
 TECHNOLOGY CENTER 3400

Continuation of 13. Other:

Claims 1-9 are allowed over the prior art of record as proposed. The submission of the proposed modifications of claims 1-9 is suggested including canceling of all other non-allowed claims. Response after final can only be entered if it places the entire (all claims) case in allowable form. The inventive entity argue that the cited prior art "fails to recite a node state field indicating a current state of the node, wherein the current state identifies the node as being dead, alive, or preparing to shut down." See Claim 10 (as amended) and Applicant's Remark Page 11 Lines 5-7. However, the amendment made to claim 10 requires further search and consideration in order to properly determine patentability of the claimed invention. As per claim 18, the applicant's argument that Mackenzie fails to teach a node writing a message prior to leaving is not persuasive. As also disclosed in the last action, MacKenzie disclosed shutting down nodes that are not in the surviving nodes where each node was required to write a status change in the respective slot (data structure) and terminate. See Figure 14C below, Column 19, Lines 24-27, Lines 54-60 and Lines 38-42 and Column 20, Lines 14-18 ("a plurality of data structures, wherein each of the plurality of data structures is associated with a computer within the plurality of computers, wherein the plurality of computers periodically update the data structures to reflect membership in the clustered computer system.").